

James E. Day, James Day and Travis Day, d/b/a
Pro-Tec Automatic Sprinklers and Road Sprin-
kler Fitters Local Union No. 689, U.A., AFL-
CIO. Cases 33-CA-9614 and 33-CA-9662

April 30, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed by the Union on November 19, 1991, in Case 33-CA-9614 and on January 6, 1991, in Case 33-CA-9662, the General Counsel of the National Labor Relations Board issued a consolidated complaint against James E. Day, James Day and Travis Day, d/b/a Pro-Tec Automatic Sprinklers, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint, the Respondent has failed to file an answer.

On April 9, 1992, the General Counsel filed a Motion for Summary Judgment. On April 14, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the said Consolidated Complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for General Counsel by letter dated March 20, 1992, notified the Respondent that no answer to the consolidated complaint had been received and that a Motion for Summary Judgment would be filed unless an answer was received by March 26, 1992.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, has been owned jointly by James E. Day and two sons, James Day and Travis Day, partners, doing business as Pro-Tec Automatic Sprinklers with office and place of business at 106 North Johnson, Longview, Illinois. It is engaged in the installation of mechanical piping and sprinkler systems. During the past calendar year, the Respondent, in conducting its operations described above, provided services in excess of \$50,000 for Atrium Apartment Complex and Plastapak Packaging Inc., enterprises within the State of Illinois. During the past calendar year, Ivan Richardson, a sole proprietorship, doing business as the Atrium Apartment Complex in Urbana, Illinois, in conducting residential apartment housing operations, derived gross revenues in excess of \$500,000. During this period of time, Ivan Richardson d/b/a Atrium Apartment Complex, in conducting its business operations, purchased and received goods valued in excess of \$5000 at the Urbana, Illinois facility, directly from points outside the State of Illinois and from other enterprises located within the State of Illinois, each of which other enterprises had received the goods directly from points outside the State of Illinois. During the past calendar year, Plastapak Packaging Inc., an Illinois corporation, sold and shipped from its Champaign, Illinois facility, goods valued in excess of \$50,000 directly to points outside the State of Illinois. We find that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. On or about November 17, 1991, Respondent discharged employees Richard L. Bogan and Richard D. Pheris Jr.

2. On an unknown but certain date in early November 1991, the Respondent, acting through its managing partner and agent, James E. Day, a supervisor within the meaning of Section 2(11) of the Act, told its employee Arthur Smith that Smith was no longer wanted for employment and was, therefore, precluded from any future employment by the Respondent.

3. The Respondent engaged in the conduct described above because the named employees joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in such activities.

CONCLUSIONS OF LAW

By discharging employees Richard L. Bogan and Richard D. Pheris Jr., and by discharging employee Arthur Smith by telling him that he was no longer wanted for employment and was precluded from any future employment by the Respondent, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Richard L. Bogan, Richard D. Pheris Jr., and Arthur Smith, we shall order the Respondent to offer them immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them with backpay to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, James E. Day, James Day and Travis Day, d/b/a Pro-Tec Automatic Sprinklers, Longview, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employees joining or assisting the Union, or any other labor organization, or for participating in concerted activities, and to discourage employees from engaging in such activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Richard L. Bogan, Richard D. Pheris Jr., and Arthur Smith immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights

and privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its offices in Longview, Illinois, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice. Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for joining or assisting Road Sprinkler Fitters Local Union No. 689, U.A., AFL-CIO, or any other labor organization or for participating in concerted activities, in order to discourage you from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Richard L. Bogan, Richard D. Pheris Jr., and Arthur Smith immediate and full re-

instatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL notify each of the above-named employees that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

JAMES E. DAY, JAMES DAY AND
TRAVIS DAY, D/B/A PRO-TEC AUTO-
MATIC SPRINKLERS